

12

United States
Circuit Court of Appeals
For the Ninth Circuit.

VACHON & STERLING, a Co-partnership Firm,
Composed of PETER VACHON and J. S.
STERLING,

Plaintiffs in Error,

vs.

NORTHERN NAVIGATION COMPANY, a Cor-
poration,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court
of the Territory of Alaska, Fourth Division.

Filed

DEC 22 1916

F. D. Monckton,
Clerk.

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Circuit Court of Appeals
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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	Page
Amended Complaint	12
Assignment of Errors	24
Attorneys of Record, Names and Addresses of.	1
Citation on Writ of Error.....	27
Clerk's Certificate to Transcript.....	29
Complaint	3
Demurrer	20
Hearing on Demurrer	21
Hearing on Motion to Strike Portions of Com- plaint	10
Judgment	22
Motion to Make More Definite and Certain....	9
Motion to Make Complaint More Definite and Certain	17
Motion to Strike	8
Motion to Strike Portions of Plaintiff's Amended Complaint	16
Names and Addresses of Attorneys of Record..	1
Order Denying Motion to Make Complaint More Definite and Certain.....	19
Order Enlarging Return Day of Writ of Error.	28
Order Granting Motion to Strike from Com- plaint	10

	Index.	Page
Order Setting Hearing on Demurrer		21
Order Sustaining Demurrer		21
Praeceptum for Transcript on Writ of Error.....		1
Stipulation as to Printing Record		31
Writ of Error		25

Names and Addresses of Attorneys of Record.

THOMAS A. MARQUAM and LOUIS K. PRATT,
Attorneys for Plaintiffs and Plaintiffs in Error,
Fairbanks, Alaska.

JOHN K. BROWN and McGOWAN & CLARK,
Attorneys for Defendant and Defendant in
Error, Fairbanks, Alaska. [1*]

*In the District Court for the Territory of Alaska,
Fourth Judicial Division.*

No. 2005.

VACHON & STERLING, a Copartnership Firm
Composed of PETER VACHON and J. S.
STERLING,

Plaintiffs in Error,

vs.

NORTHERN NAVIGATION CO., a Corporation,
Defendant in Error.

Praeceptum for Transcript on Writ of Error.

To J. E. Clark, clerk of said court:

You will please prepare and certify to a transcript of the record in the above-entitled action, for the use of the United States Circuit Court of Appeals for the Ninth Judicial Circuit in connection with the writ of error heretofore sued out by the plaintiffs, and when such transcript is completed, forward the same to F. D. Monckton, Clerk of said Court of Appeals, at San Francisco, California.

*Page-number appearing at foot of page of original certified Transcript of Record.

The said transcript must contain the following papers, to wit:

- 1st. The original complaint.
 - 2d. The amended complaint.
 - 3d. The motion to strike and make original complaint more definite and certain.
 - 3½. The motion to strike and make more definite and certain, the amended complaint.
 - 4th. The demurrer to amended complaint.
 - 5th. All minute and other journal entries including the final judgment, that were made and entered of record by the clerk in connection with the case.
- Also the petition for writ of error, assignment of errors, order allowing writ, etc., and bond and copy of the praecipe for transcript.
- 6th. The writ of error, citation and order extending time to file transcript in the Court of Appeals are original papers and must be forwarded to Mr. Monckton at San Francisco, California, along with the transcript.

THOMAS A. MARQUAM and
LOUIS K. PRATT,

Attorneys for Plaintiffs. [2]

Service of the above and foregoing praecipe for transcript on writ of error by receipt of a copy thereof admitted this 21 day of September, 1916.

JOHN K. BROWN,
McGOWAN & CLARK,
Attorneys for Defendant.

[Indorsed]: Filed in the District Court, Territory of Alaska, 4th Div. Sept. 25, 1916. J. E. Clark, Clerk. [3]

[Caption and Title.]

Complaint.

The plaintiffs for cause of action against defendant allege and state;

I.

At all times mentioned in this complaint the plaintiffs were a copartnership firm engaged in the mercantile business in the city of Fairbanks and elsewhere in Alaska and transacted their business under the firm name of Vachon & Sterling.

II.

That at all times mentioned herein the defendant, Northern Navigation Co., was a corporation duly organized and existing under and by virtue of the Laws of the State of New Jersey and authorized and, in fact, transacted business within the Territory of Alaska.

III.

That in March, 1907, the said Peter Vachon, for and on behalf of plaintiff firm, entered into a contract with the Northern Commercial Co., a corporation organized and existing under the Laws of the State of New Jersey and authorized to and, in fact doing business in the Territory of Alaska, to transport for the plaintiffs 1500 tons of merchandise from Seattle, Washington, to Chena, Alaska by an all-water route. That afterwards the said contract was assigned by the said Northern Commercial [4] Co., and taken over and accepted by the defendant, the Northern Navigation Co. and the latter company with the consent of the plaintiff undertook to carry

out the terms of the said contract as between said Peter Vachon and said Northern Commercial Co.

IV.

That by the terms of the said contract, so transferred and assigned to the defendant company, it was provided that said merchandise of the plaintiffs' was to be carefully and safely transported by ocean steamers and river boats from the city of Seattle in the State of Washington to the town of Chena, Territory of Alaska, for delivery to plaintiffs. That at said time defendant was engaged in the business of transporting merchandise by ocean and river steamers between the points mentioned and, in fact, during the said season transported from Seattle to Chena and delivered to plaintiffs most of the said 1500 tons of general merchandise, but portions thereof were lost in transit by the negligence of defendant's employees and never delivered, so that at the end of the season a controversy arose between plaintiffs and defendant with reference to such shortage. That said controversy was the subject of negotiations between them at the close of navigation in the year 1907 and continued to be until some time in the month of April, 1908, at which time plaintiffs and defendant adjusted their differences, covering the matter of the claims of plaintiffs against the defendant for the latter's failure to deliver to plaintiffs at Fairbanks 30 boxes of candles, 32 sacks of onions, 49 gunnies of flour and 21 sacks of potatoes. That at the time of such adjustment defendant admitted its failure to deliver to plaintiffs the said merchandise and that it was liable to plaintiffs for

the laid-down cost thereon at the city of Fairbanks. That on or about the 6th day of July, 1908, at Fairbanks, an account was stated between plaintiffs and defendant concerning such adjustment for loss of merchandise, upon which a balance of \$853.99 was found [5] to be due from said defendant to this plaintiff, which sum defendant then agreed to pay.

The plaintiffs for second and further cause of action against the defendant alleges and state:

I.

At all times mentioned in this complaint the plaintiffs were a copartnership firm engaged in the mercantile business in the city of Fairbanks and elsewhere in Alaska, and transacted their business under the firm name of Vachon & Sterling.

II.

That at all times mentioned herein the defendant, the Northern Navigation Co., was a corporation duly organized and existing under and by virtue of the Laws of the State of New Jersey and authorized and, in fact, transacting business within the Territory of Alaska.

III.

That in March, 1907, the said Peter Vachon, for and on behalf of the plaintiff firm, entered into a contract with the Northern Commercial Co., a corporation organized and existing under the laws of the State of New Jersey and authorized to and, in fact, doing business in the Territory of Alaska, to transport for the plaintiffs 1500 tons of merchandise from Seattle, Washington, to Chena, Alaska, by an all-water route. That afterwards the said contract

was assigned by the said Northern Commercial Co. and taken over and accepted by the defendant, the Northern Navigation Co., and the latter company with the consent of the plaintiffs undertook to carry out the terms of the said contract as between said Peter Vachon and said Northern Commercial Co.

[6]

IV.

That by the terms of the said contract, so transferred to and assigned by the defendant company it was provided that said merchandise of the plaintiffs was to be carefully and safely transported by ocean steamers and river boats from the City of Seattle in the State of Washington, to the town of Chena, Territory of Alaska, for delivery to plaintiffs. That at said time defendant was engaged in the business of transporting merchandise by ocean and river steamers between the points mentioned, and, in fact, during said season transported from the City of Seattle to the town of Chena and delivered to plaintiffs most of the said 1500 tons of general merchandise, but a large shipment of eggs belonging to the plaintiffs being a part of the said 1500 tons was damaged by getting wet while in transit by the negligence of defendant's employees, to such an extent that at the end of the season a controversy arose between plaintiffs and defendant with reference to such damage, said controversy being the subject of negotiations between them at the close of navigation in the year 1907, and continued to be such until some time between the 16th and 26th days of March, 1908, at which time the plaintiffs

and defendant adjusted their differences, covering the matter of the claim of plaintiffs against defendant for the damage to said eggs, the defendant then and there acknowledging its liability for the loss of 60 cases of said eggs and its liability to plaintiffs for the laid-down cost, thereof to plaintiffs, at Fairbanks, to wit, the sum of \$677.82. That between March 16th and Apr. 15th, 1908, at Fairbanks an account was stated between plaintiffs and defendants concerning such adjustment for loss of said eggs upon which a balance of \$677.82 was found to be due from said defendant to *this* plaintiffs, [7] which sum defendant then agreed to pay.

WHEREFORE, the plaintiffs pray judgment against the defendant;

1st. Upon the first cause of action, for the sum of \$853.99 together with interest thereon at 8% per annum from January 1st, 1909.

2d. On the second cause of action, for the sum of \$677.82, together with interest at 8% per annum thereon from January 1st, 1909.

3d. For the costs and disbursements in this cause and behalf expended.

T. A. MARQUAM,
LOUIS K. PRATT & SON,
Attorneys for Plaintiffs.

United States of America,
Territory of Alaska,—ss.

Peter Vachon on oath says: I am one of the plaintiffs in the above-entitled cause; I have read the above and foregoing complaint and am familiar with

the allegations and statements therein contained and the same are true as I verily believe.

PETER VACHON.

Subscribed and sworn to before me this 14th day of March, 1914.

[Seal]

T. A. MARQUAM,

Notary Public in and for Territory of Alaska.

My commission expires July 6, 1914.

[Endorsed]: No. 2005. District Court, 4th Division, Territory of Alaska. Vachon & Sterling, a Copartnership Firm Composed of Peter Vachon and J. S. Sterling, Plaintiffs, vs. Northern Navigation Co., a Corporation, Defendant. Complaint. Filed in the District Court, Territory of Alaska, 4th Div. March 14, 1914. Angus McBride, Clerk. [8]

[Caption and Title.]

Motion to Strike.

Now comes the above-named defendant, by Messrs. McGowan & Clark and John K. Brown, its attorneys, and moves this Honorable Court, for an order striking from the complaint herein:

I.

All of paragraph IV of the first cause of action, from the beginning of said paragraph, to and including the third line thereof, on page 3 of said complaint, on the ground that the same, and the whole thereof, contains matters which are irrelevant, immaterial and redundant;

II.

All of paragraph IV of the second cause of action,

from the beginning of said paragraph, to and including the figures \$677.82, in the third line from the bottom of page 5 of said complaint, on the ground that the same, and the whole thereof, contains irrelevant, immaterial and redundant matter.

WHEREFORE, defendant prays that said complaint be dismissed with costs.

Fairbanks, Alaska, May 16, 1914.

McGOWAN & CLARK,
JOHN K. BROWN,
Attorneys for Defendant. [9]

[Caption and Title.]

Motion to Make More Definite and Certain.

The above-named defendant hereby moves this Honorable Court for an order requiring the plaintiff:

I.

To make its first cause of action contained in the complaint herein more definite and certain, by setting out particularly whether its alleged cause of action is based upon a claim for violation of a contract of *of* freightment, or upon an account stated.

II.

To make its second cause of action contained in the complaint herein more definite and certain, by setting out particularly whether its alleged cause of action is based upon a claim for violation of a contract of *of* freightment, or upon an account stated.

Fairbanks, Alaska, May 16, 1914.

McGOWAN & CLARK,
JOHN K. BROWN,
Attorneys for Defendant.

Due service of the within motions and receipt of a copy thereof are hereby acknowledged this 16th day of May, 1914.

T. A. MARQUAM,
Attorneys for Plaintiff.

[Endorsed]: No. 2005. In the United States District Court, Territory of Alaska, Fourth Division. Vachon & Sterling, Plaintiff, vs. Northern Navigation Company, Defendant. Motion to Strike and Motion to Make More Definite and Certain. Filed in the District Court, Territory of Alaska, 4th Div. May 16, 1914. Angus McBride, Clerk. [10]

[Caption and Title.]

Hearing on Motion to Strike Portions of Complaint.

Now on this day came on for hearing defendant's motion to strike portions of the complaint herein, Louis K. Pratt appearing in behalf of plaintiffs, J. K. Brown in behalf of defendant. After argument thereon by the respective attorneys said matter was submitted to the Court, and decision thereon was reserved until a later date.

CHARLES E. BUNNELL,
District Judge. [11]

[Caption and Title.]

Order Granting Motion to Strike from Complaint.

The motion of the above-named defendant to strike from the complaint herein all of paragraph IV of the first cause of action set out in said com-

plaint, from the beginning of said paragraph IV to and including the 3d line thereof on page 3 of said complaint, and also the motion of the above-named defendant to strike from the second cause of action set out in said complaint all of paragraph IV of said second cause of action, from the beginning of said paragraph to and including the figures \$677.82 in the sixth line from the bottom of page 5 of said complaint, coming on for hearing on the 27th day of March, 1915, and having been duly argued in behalf of the respective parties, by their respective attorneys and submitted to the Court for its decision, now on this 30th day of March, 1915,

IT IS ORDERED that all of paragraph IV of the first cause of action set out in said complaint, from the beginning of said paragraph to and including the 3d line thereof, on page 3, of said complaint, be, and the same is hereby, stricken from said complaint; and

IT IS FURTHER ORDERED that all of paragraph IV of the second cause of action set out in said complaint, from the beginning of said paragraph to and including the figures \$677.82, [12] being in the 6th line from the bottom of page 5 of said complaint, be, and the same is hereby stricken from said complaint; and

IT IS FURTHER ORDERED that the above-named plaintiff have five (5) days from the date hereof, within which to serve and file an amended complaint in this action.

Done in open court this March 30, 1915.

CHARLES E. BUNNELL,
District Judge.

Entered in Court Journal No. 13, page 103.

[Endorsed]: No. 2005. In the United States District Court, Territory of Alaska, Fourth Division. Vachon & Sterling, a Copartnership, etc., Plaintiff, vs. Northern Navigation Co., Defendant. Order Granting Motion to Strike from Complaint. Filed in the District Court, Territory of Alaska, 4th Div. Mar. 30, 1915. Angus McBride, Clerk. By P. R. Wagner, Deputy. [13]

[Caption and Title.]

Amended Complaint.

The plaintiffs for cause of action against defendant allege and state:

I.

At all times mentioned in this complaint the plaintiffs were a copartnership firm engaged in the mercantile business in the city of Fairbanks and elsewhere in Alaska and transacted their business under the firm name of Vachon & Sterling.

II.

That at all times mentioned herein the defendant, Northern Navigation Co., was a corporation duly organized and existing under and by virtue of the laws of the State of New Jersey and authorized and, in fact, transacted business with the Territory of Alaska.

III.

That in March, 1907, the said Peter Vachon, for and on behalf of the plaintiff firm, entered into a contract with the Northern Commercial Co., a corporation organized and existing under the laws of the State of New Jersey and authorized and, in fact, doing business in the Territory of Alaska, to transport for the plaintiffs 1500 tons of merchandise from Seattle, Washington, to Chena, Alaska, by an all-water route. That afterwards the said contract was assigned by the said Northern Commercial Co. and taken over and accepted by the defendant, the Northern Navigation Co. and the latter company with the consent of the [14] plaintiff undertook to carry out the terms of the said contract as between said Peter Vachon and said Northern Commercial Co.

IV.

That at the close of the open season of 1907, a controversy arose between the plaintiffs and the defendant concerning the failure of defendant to deliver to plaintiffs a part of the said 1500 tons of merchandise, which was adjusted on or about the 6th day of July, 1908, at Fairbanks, and an account was stated between the plaintiffs and defendant concerning such adjustment for loss of merchandise, by which a balance of \$853.99 was found to be due these plaintiffs from defendant, which sum defendant then and thereby agreed to pay.

The plaintiffs for second and further cause of action against the defendant *alle* and state:

I.

At all times mentioned in this complaint the plaintiffs were a copartnership firm engaged in the mercantile business in the city of Fairbanks and elsewhere in Alaska and transacted their business under the firm name of Vachon & Sterling.

II.

That at all times mentioned herein the defendant, the Northern Navigation Co., was a corporation duly organized and existing under and by virtue of the laws of the State of New Jersey and authorized and, in fact, transacted business within the Territory of Alaska.

III.

That in March, 1907, the said Peter Vachon, for and on behalf of the plaintiff firm, entered into a contract with the Northern Commercial Co., a corporation organized and existing under the laws of the State of New Jersey and authorized to and, [15] in fact, doing business in the Territory of Alaska, to transport for the plaintiffs 1500 tons of merchandise from Seattle, Washington, to Chena, Alaska, by an all-water route. That afterwards the said contract was assigned by the said Northern Commercial Co. and taken over and accepted by the defendant, the Northern Navigation Co., and the latter company with the consent of the plaintiffs undertook to carry out the terms of the said contract as between said Peter Vachon and said Northern Commercial Co.

IV.

That at the close of the open season of 1907, a

controversy arose between the plaintiffs and the defendant concerning the failure of defendant to deliver to plaintiffs a part of the said 1500 tons of merchandise, which controversy at some time between March 16, and April 15, 1908, Fairbanks, Alaska, was adjusted, and an account was stated between plaintiffs and defendant concerning the same by which a balance of \$677.82 was found to be due from the said defendant to these plaintiffs, which said sum the defendant then and thereby agreed to pay.

WHEREFORE, the plaintiffs pray judgment against the defendant;

1st. Upon the first cause of action, for the sum of \$853.99, together with interest thereon at 8% per annum from January 1st, 1909.

2d. On the second cause of action, for the sum of \$677.82, together with interest at 8% per annum thereon from January 1st, 1909.

3d. For the costs and disbursements in this cause and behalf expended.

THOMAS A MARQUAM,
LOUIS K. PRATT & SON,
Attorneys for Plaintiffs. [16]

United States of America,
Territory of Alaska,—ss.

J. S. Sterling, on oath says: I am one of the plaintiffs in the above-entitled cause; I have read the above and foregoing Amended Complaint and am familiar with the allegations and statements therein contained and the same are true as I verily believe.

J. S. STERLING.

Subscribed and sworn to before me this 25th day of June, 1915.

[Seal]

LOUIS K. PRATT,

Notary Public in and for Territory of Alaska.

My commission expires Nov. 10, 1915.

Service of the foregoing complaint admitted and a true copy thereof received this 26 day of June, 1915.

McGOWAN & CLARK,

JOHN K. BROWN,

Attorneys for Defendant.

[Endorsed]: No. 2005. In the District Court for the Territory of Alaska, 4th Div. *Vachon & Sterling*, a Copartnership Firm Composed of Peter Vachon and J. S. Sterling, Plaintiffs, vs. Northern Navigation Co., a Corporation, Defendant. Amended Complaint. Filed in the District Court, Territory of Alaska, 4th Div. Jun. 26, 1915. J. E. Clark, Clerk. By P. R. Wagner, Deputy. [17]

[Caption and Title.]

Motion to Strike Portions of Plaintiff's Amended Complaint.

Comes now the defendant above-named and moves to strike from the plaintiff's amended complaint on file herein;

(1) All of paragraph four of the first cause of action therein, on the ground that the matters and things therein contained are sham, frivolous, irrelevant, and redundant;

(2) All of paragraph four of plaintiff's alleged second cause of action, on the ground that the mat-

ters and things therein contained are sham, frivolous, irrelevant, and redundant.

McGOWAN & CLARK,
Attorneys for Defendant.

Due service of the within Motions and receipt of a copy thereof are hereby acknowledged this 22d day of July, 1915.

THOMAS A. MARQUAM and
LOUIS K. PRATT & SON,
Attorneys for Plffs.

[Indorsed]: No. 2005. In the United States District Court, Territory of Alaska, Fourth Division. Vachon & Sterling, Plaintiffs, vs. Northern Navigation Co., Defendant. Motion to Strike and Motion to Make More Definite and Certain. Filed in the District Court, Territory of Alaska, 4th Div. Jul. 22, 1915. J. E. Clark, Clerk. By Sidney Stewart, Deputy. [18]

[Caption and Title.]

Motion to Make Complaint More Definite and Certain.

Comes now the defendant in the above-entitled action and, in the event that the Court has not granted the motion filed herewith to strike portions of plaintiff's amended complaint, moves this Court for an order requiring plaintiff to make his said amended complaint more definite and certain in the following particulars, to wit:

(1) To make paragraph four of his first alleged cause of action more definite, by setting forth in

what way the controversy arose between plaintiff and defendant, and if said controversy arose from loss of merchandise that he be required to set forth a particular statement of the merchandise that is alleged to have been lost or not delivered, the amount thereof, and a particular description thereof, and to furnish a bill of particulars concerning the same.

(2) To make paragraph four of his alleged second cause of action more definite, by setting forth in what way the controversy arose between plaintiff and defendant, and if said controversy arose from loss of merchandise that he be required to set forth a particular statement of the merchandise that is alleged to have been lost or not delivered, the amount thereof, and a particular description thereof, and to furnish a bill of particulars concerning the same.

(3) To set forth definitely in said complaint whether the alleged controversy, described in paragraph four of the [19] second alleged cause of action, is the same controversy that is described in paragraph four of the alleged first cause of action, and if not, to state why and in what manner two alleged accounts stated were arrived at, and if so, whether they concern the same property, and whether they concern separate shipments, and to inform defendant definitely whether the sum of eight hundred fifty-three dollars ninety-nine cents, claimed as a balance due on an account stated, as set forth in plaintiff's alleged first cause of action, concerns the same property and the same account

that is described in paragraph four of said alleged second cause of action.

McGOWAN & CLARK,
Attorneys for Defendant.

[Endorsed]: Filed in the District Court, Territory of Alaska, 4th div. Jul. 23, 1915. J. E. Clark, Clerk. By Sidney Stewart, Deputy. [20]

[Caption and Title.]

**Order Denying Motion to Make Complaint More
Definite and Certain.**

Now on this day the hearing on defendant's motion to strike and defendant's motion to make more definite and certain came on regularly at this time to be heard by the Court, Louis K. Pratt appearing for and on behalf of plaintiffs and John K. Brown appearing for and on behalf of defendant, and after argument by counsel for the respective parties hereto, and counsel for defendant herein waiving his motion to make more definite and certain, and the Court being fully advised in the premises,

IT IS ORDERED that the defendant's motion to strike be and the same is hereby denied and defendant is given five days to plead further.

CLERK'S NOTE: To which defendant notes an exception.

CHARLES E. BUNNELL,
District Judge. [21]

[Caption and Title.]

Demurrer.

Comes now the defendant in the above-entitled action and demurs to the plaintiff's alleged first cause of action, upon the grounds following, to wit:

(1) That the matters and things alleged therein do not constitute a cause of action against the defendant herein.

(2) That said alleged first cause of action shows upon its face that it is based upon an alleged account stated arising out of a breach of contract, and a breach of contract cannot be used as a basis of an account stated.

(3) That said alleged first cause of action shows upon its face that it is barred by the statute of limitations, and that the suit has not been commenced within six years from the date of the creation of said liability, if any existed.

Defendant demurs to plaintiff's alleged second cause of action upon the grounds following, to wit:

(1) That the matters and things alleged therein do not constitute a cause of action against the defendant herein.

(2) That said alleged second cause of action shows upon its face that it is based upon an alleged account stated arising out of a breach of contract, and a breach of contract cannot be used as a basis of an account stated.

(3) That said alleged second cause of action shows upon its face that it is barred by the statute

of limitations, and that the suit has not been commenced within six years after the creation of said liability, if any existed. [22]

McGOWAN & CLARK and
JOHN K. BROWN,

Attorneys for Defendant.

Due service hereof admitted this 24th day of Sept. 1915.

THOS. A. MARQUAM and
LOUIS K. PRATT & SON,
Attorneys for Pltffs.

[Indorsed]: Filed in the District Court, Territory of Alaska, 4th Div. Sep. 24, 1915. J. E. Clark, Clerk. By L. F. Protzman, Deputy. [23]

[Caption and Title.]

Order Setting Hearing on Demurrer.

Now at this time, upon motion of Louis K. Pratt, one of the attorneys for plaintiffs herein, and no objections being made,

IT IS ORDERED that the hearing on demurrer be set for 2 o'clock P. M. Wednesday, September 29th, 1915.

CHARLES E. BUNNELL,
District Judge. [24]

[Caption and Title.]

Hearing on Demurrer.

Now on this day J. K. Brown appearing for and on behalf of defendant and L. K. Pratt appearing for and on behalf of plaintiff, the hearing on defendant's

demurrer to plaintiff's amended complaint came on regularly to be heard by the Court, and after argument by counsel for the respective parties, and the Court being fully advised in the premises, and having carefully considered the matter,

IT IS ORDERED that defendant's demurrer be and the same is hereby sustained.

Clerk's note: Plaintiff excepts, exception allowed.

CHARLES E. BUNNELL,
District Judge. [25]

*In the District Court for the Territory of Alaska,
Fourth Judicial Division.*

No. 2005.

VACHON & STERLING, a Copartnership Firm
Composed of PETER VACHON and J. S.
STERLING,

Plaintiff,

vs.

NORTHERN NAVIGATION COMPANY, a Cor-
poration,

Defendant.

Judgment.

Be it remembered that, on the twenty-ninth day of September, A. D. one thousand nine hundred fifteen, the demurrer of the above-named defendant to each of the causes of action set out in plaintiff's amended complaint, on the ground that neither of said causes of action states facts sufficient to constitute a cause of action against defendant, came on regularly for hearing at two o'clock P. M. on said

day, Thos. A. Marquam and Louis K. Pratt, esquires, appearing as counsel for plaintiff, and John K. Brown, esquire, and Messrs McGowan & Clark, appearing as counsel for defendant; whereupon said counsel for the respective parties argued said demurrer, and the Court, being fully advised in the premises, ordered that said demurrer be sustained as to each of the causes of action set out in plaintiff's amended complaint; whereupon the attorneys for the plaintiff requested the Court to grant them leave to file a second amended complaint in behalf of plaintiff, to which the counsel for defendant then and there objected, and the Court having sustained said objection, refused to permit the filing of such second amended complaint, to which ruling of the Court, as well as to the ruling of the Court sustained said demurrer, counsel for plaintiff then and there duly excepted; whereupon counsel for defendant moved the Court that judgment [26] be entered in favor of defendant and against plaintiff, to the effect that plaintiffs take nothing by their said causes of action, and that defendant have judgment against said plaintiff for its cost and disbursements herein, which motion was granted by the Court;

Now, therefore, in pursuance of the proceedings above recited, it is ordered and adjudged by the Court that the plaintiff take nothing by its said causes of action set forth in its amended complaint, and that the defendant herein, Northern Navigation Company, a corporation, do have and recover of and from the plaintiffs, Peter Vachon and J. S. Sterling copartners under the firm name and style of Vachon

& Sterling, its costs and disbursements herein, to be taxed by the Clerk of this Court.

Done at Fairbanks, Alaska, on this second day of October, A. D. one thousand nine hundred fifteen.

CHARLES E. BUNNELL,

District Judge.

Entered in Court Journal No. 13, page 266.

[Indorsed]: Filed in the District Court, Territory of Alaska, 4th Div. Oct. 2, 1915. J. E. Clark, Clerk. By Sidney Stewart, Deputy. [27]

[Caption and Title.]

Assignment of Errors.

The plaintiffs below and plaintiffs in error in the appellate court will rely for a reversal of the judgment against them in the said Court on the following errors occurring during the progress of the trial, to wit:

1. The Court erred in sustaining the demurrer to plaintiffs amended complaint, interposed by defendant.

2. The Court erred in refusing to allow plaintiffs below to further amend their amended complaint after the Court had sustained a demurrer thereto.

3. The Court erred in its final judgment in adjudging that plaintiffs take nothing by their amended complaint and dismissing their action and rendering a judgment in favor of the defendant and against the plaintiffs for the costs.

THOMAS A. MARQUAM and
LOUIS K. PRATT,

Attys. for Plffs.

Service of the above and foregoing assignment of errors, by receipt of a copy thereof, is hereby admitted this 21 day of September, 1916.

JOHN K. BROWN,
McGOWAN & CLARK,
Attorneys for Defendant.

[Indorsed]: Filed in the District Court, Territory of Alaska, 4th Div. Sept. 25, 1916. J. E. Clark, Clerk. [30]

Writ of Error.

United States of America,—ss.

The President of the United States, to the Honorable, the Judge of the District Court for the Territory of Alaska and District of Alaska, Fourth Division, GREETING:

Because in the record and proceedings, as also in the rendition of the judgment in a civil action in said District Court before you between Vachon & Sterling, a copartnership firm composed of Peter Vachon and J. S. Sterling, plaintiffs below and plaintiffs in error, and the Northern Navigation Co., a corporation, defendant below and defendant in error, a manifest error hath happened to the great damage of the said plaintiff below and plaintiff in error, as by his petition for a writ of error appears.

We, being willing that error, if any hath been, should be corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record

and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the City of San Francisco, in the State of California, on the 25th day of October, 1916, in the said Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

WITNESS the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the Supreme Court of the United States the 25th day of September, 1916.

[Seal]

J. E. CLARK,

Clerk of the U. S. District Court for the Territory of Alaska, Fourth Division. [33]

The foregoing Writ is hereby allowed.

CHARLES E. BUNNELL,

District Judge.

Service of the above and foregoing Writ of Error, by receipt of a copy thereof, is hereby acknowledged this 25 day of September, 1916.

JOHN K. BROWN,

McGOWAN & CLARK,

Attorneys for Defendant in Error.

Filed in the District Court, Territory of Alaska, 4th Div., Sep. 25, 1916. J. E. Clark, Clerk. By _____, Deputy. [34]

United States of America,
Territory of Alaska,
Fourth Judicial Division,—ss.

Citation on Writ of Error.

The President of the United States of America, to
Northern Navigation Co., a Corporation, De-
fendant, and to John K. Brown and McGowan
& Clark, Attorneys for the said Defendant,
GREETING:

You are hereby cited to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, to be holden in the City of San Francisco, State of California, within thirty days from the date of this writ, pursuant to an order allowing a writ of error from a final judgment in favor of said defendant duly entered and made by the District Court for the Territory of Alaska, Fourth Judicial Division, on October 2, 1915, in cause No. 2005, on the records of said District Court, wherein Vachon & Sterling, a copartnership firm composed of Peter Vachon and J. S. Sterling, were plaintiffs, and Northern Navigation Co., a corporation, was defendant, and that you then and there show cause, if any there be, why the said judgment as mentioned and referred to in said order allowing said writ of error, should not be corrected, set aside and reversed, and why speedy justice should not be done to the said Vachon & Sterling, a copartnership firm composed of Peter Vachon and J. S. Sterling.

WITNESS the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the Supreme Court

of the United States, this 25th day of September, A. D. 1916.

CHARLES E. BUNNELL,
District Judge.

Service of the above and foregoing Citation, by receipt of a copy thereof, is hereby admitted this 25 day of September, 1916. .

JOHN K. BROWN,
McGOWAN & CLARK,
Attorneys for Defendant in Error.

Filed in the District Court, Territory of Alaska, 4th Div., Sep. 25, 1916. J. E. Clark, Clerk. By _____, Deputy. [35]

[Caption and Title.]

Order Enlarging Return Day of Writ of Error.

On application of the said plaintiffs in error, by reason of the great distance between Fairbanks, Alaska, and San Francisco, California, and the delays and uncertainties of the transmission of mail matter between the said points;

IT IS ORDERED that the return day of the writ of error in this cause signed on the 25th day of September, 1916, be enlarged to the 31st day of December, 1916.

Dated at Fairbanks, Alaska, this 25th day of September, 1916.

CHARLES E. BUNNELL,
District Judge.

Entered in Court Journal No. 13, page 591.

Service of the above and foregoing order enlarging return day, by receipt of a copy thereof, admitted this 25 day of September, 1916.

JOHN K. BROWN,
McGOWAN & CLARK,

Attorneys for Defendant in Error.

Filed in the District Court, Territory of Alaska,
4th Div., Sep. 25, 1916. J. E. Clark, Clerk. By
_____, Deputy. [39]

Clerk's Certificate to Transcript.

United States of America,
Territory of Alaska,
Fourth Division,—ss.

I, J. E. Clark, Clerk of the District Court for the Territory of Alaska, Fourth Division, do hereby certify that the foregoing, consisting of 41 pages, numbered from 1 to 41, inclusive, constitute a full, true and correct transcript of the record on writ of error, in cause No. 2005, Vachon & Sterling, a co-partnership firm, composed of Peter Vachon and J. S. Sterling, Plaintiffs and Plaintiffs in Error, vs. Northern Navigation Company, a corporation, Defendant, and Defendant in Error, and was made pursuant to and in accordance with the praecipe of the plaintiff in error filed in this action, and made a part of this transcript, and by virtue of the writ of error, issued in said cause and is the return thereof in accordance therewith; and I certify that the Writ of Error, Citation and Order extending time to file transcript, annexed hereto, are the originals thereof;

and I do further certify that the index thereof, consisting of page i, is a correct index of said transcript on appeal; also that the costs of preparing said transcript and this certificate, amounting to Fourteen and 40/100 dollars (\$14.40), has been paid to me by counsel for plaintiff in error in said action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of this court this 30th day of September, A. D. 1916.

[Seal] J. E. CLARK,
Clerk District Court, Territory of Alaska, Fourth
Division. [41]

[Endorsed]: No. 2870. United States Circuit Court of Appeals for the Ninth Circuit. *Vachon & Sterling*, a Copartnership Firm Composed of Peter Vachon and J. S. Sterling, Plaintiff in Error, vs. Northern Navigation Company, a Corporation, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Territory of Alaska, Fourth Division.

Filed October 27, 1916.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

*In the United States Circuit Court of Appeals for
the Ninth Judicial Circuit.*

No. 2870.

VACHON & STERLING, a Copartnership Firm
Composed of PETER VACHON and J. S.
STERLING,

Plaintiffs in Error,

vs.

NORTHERN NAVIGATION CO., a Corporation,
Defendant in Error.

Stipulation as to Printing Record.

It is stipulated between the attorneys for the parties respectively that in printing the record in this case for use in the said court, all captions should be omitted after the title of the cause has once been printed, and the words "Caption and Title" and the name of the paper or document should be substituted therefor; also that after printing the assignment of errors, writ of error and citation, other papers connected with the writ of error need not be printed. Otherwise than as above indicated, we desire that the transcript of the case be printed in its entirety.

THOMAS A. MARQUAM,

LOUIS K. PRATT,

Attorneys for Plaintiffs in Error.

JOHN K. BROWN,

McGOWAN & CLARK,

Attorneys for Defendant in Error.

[Endorsed]: No. 2870. In the United States Circuit Court of Appeals for the Ninth Judicial Circuit. Vachon & Sterling, etc., Plaintiffs in Error, vs. Northern Navigation Co., a Corporation, Defendant in Error. Stipulation as to Printing Record. Filed Oct. 27, 1916. F. D. Monckton, Clerk.